Comment On This Case

VAZQUEZ v. HYUNDAI MOTOR AMERICA

ADINA VAZQUEZ, Plaintiff and Appellant,
v.
HYUNDAI MOTOR AMERICA, Defendant and Respondent.

G041152.

Court of Appeals of California, Fourth Appellate District, Division Three

October 13, 2009

Not to be Published in Official Reports

Scott Kaufman and Kevin Faulk for Plaintiff and Appellant.

Ruben & Sjolander and David N. Ruben for Defendant and Respondent.

OPINION

MOORE, J.

Plaintiff appeals from the denial of her motion for attorney fees following the settlement of a defective automobile case filed under several consumer protection statutes. Because the trial court denied plaintiff's motion entirely, we must presume the trial court found that plaintiff was not entitled to attorney fees as a matter of law. We disagree with the trial court, reverse and remand for further proceedings.

I

FACTS

In April 2005, Adina Vasquez purchased a 2005 Hyundai Sonata (the vehicle) from the Norm Reeves Honda dealership (the dealership) in Temecula, California. On May 9, 2006, counsel for Vasquez sent a letter to the dealership and Hyundai Motor America, Inc. (Hyundai) regarding the vehicle. The letter stated that since the time of purchase, the vehicle had been taken in for service three times due to "Engine/Oil Issues" and once for "Clutch & Engine Issues."

With regard to the clutch problem, which appeared to be the most serious, the letter stated that repairing the vehicle had taken 53 days and further claimed that Vasquez had been told by the dealership that the problem was due to wear (in other words, it was Vasquez's fault). The dealership declined to pay for the repair on that basis, and Vasquez paid $2,026.05 out of pocket. Vasquez took the part to an independent shop and was told that the clutch was not worn, but that it had malfunctioned and "blown up, due to faulty construction/design."

Given these facts, the letter continued, Vasquez argued that the vehicle qualified for a buy back under the Song-Beverly Consumer Warranty Act (Song-Beverly) (Civ. Code, § 1790 et seq.), the Consumer Legal Remedies Act (CLRA) (Civ. Code, § 1750 et seq.), and the federal Magnuson-Moss Warranty Act (Magnuson-Moss) (15 U.S.C., § 2301, et seq.). Vasquez also alleged common law fraud regarding what she was told about the clutch. Vasquez made two sets of demands. Under the CLRA, she demanded that the dealership and Hyundai pay off any loan balance, buy back the vehicle, reimburse her for the clutch repair, and pay $83,000 in punitive damages, plus prejudgment interest and attorney fees and costs. Under Song-Beverly, she made similar demands regarding the buy back, but instead of punitive damages

demanded a civil penalty of $55,000, or twice the damages incurred. The letter requested action within 30 days.

On May 23, Hyundai responded with a letter requesting further information, such as invoices, repair orders, and receipts. There is no indication in the record that Vasquez responded. On June 2, Hyundai sent a letter offering to settle the matter for $4,500 in exchange for a release. On June 14, Hyundai sent a second letter offering a replacement or repurchase pursuant to Song-Beverly and $1500 in attorney fees in exchange for a release. The offer included a provision that Hyundai would receive the "statutory mileage offset."

Vasquez responded on July 2, stating the offer was not acceptable, and asking for a new offer including "all monies paid for the vehicle to date, all related expenses, i.e. cost for independent inspection of vehicle, rentals, etc., prejudgment interest at the legal rate (10%) attorneys fees and expenses in full and no offset of any kind." Hyundai declined, stating that based on the repair history and other information, Vasquez's demand was not acceptable. It reiterated its earlier offer for repurchase under Song-Beverly.

In January 2007,[1] Vasquez filed the instant lawsuit, alleging violations of the CLRA, Magnuson-Moss, Song-Beverly, Business and Professions Code section 9880, revocation and rescission. In February, Hyundai made an offer pursuant to Code of Civil Procedure section 998, offering to reimburse Vasquez the amount of her payments thus far, less any rebates, credits, negative equity or lease balances; to pay Vasquez an amount sufficient to pay off her loan, plus incidental damages such as taxes, license and registration fees, repair costs, and rental car costs; an additional $100; and attorney fees in the amount of $1500.

In return, plaintiff was to execute a release and return the vehicle. Vasquez objected to the offer on several grounds, and ultimately expired without acceptance.

In August, the parties attended a mandatory settlement conference (MSC). Vasquez's MSC statement demanded a total of $80,922.80, comprising $54,035.37 to Vasquez and $26,887.43 in attorney fees and costs. Hyundai offered the amount required by statute under Song-Beverly, with the proviso that the court could determine attorney fees.

A settlement was reached at the MSC and read into the record. Hyundai's counsel stated the following when asked about the terms: "Your Honor, this is a lemon law claim, so we are agreeing to settle it under the lemon law. The numbers still need to be calculated pursuant to a statutory formula." Counsel stated that the dealership agreed to pay $6000 cash to Vasquez in return for a dismissal with prejudice. Then counsel stated: "With respect to the lemon law claims pending against Hyundai . . . Hyundai . . . is agreeing to a statutory lemon law [] repurchase under Civil Code section 1793.2 (d), which includes all the subsections involving the actual itemization [t]hat we have to pay plus the mileage offset. It's a pretty standard formula plaintiff's counsel and defense counsel know about." With respect to attorney fees, Vasquez was to bring an attorney fee application before the court, and "Hyundai will defend the attorney fee application because that is the primary dispute at this point in the case as to the amount of attorney's fees that ought to be awarded."

Following the settlement, a dispute ensued regarding the settlement. Vasquez filed an unsuccessful motion to enforce the settlement. Ultimately, the parties resolved the matter in mediation and a written

settlement agreement was executed. Hyundai agreed to reimburse Vasquez, less mileage and other offsets, the amount of $3,171.77, and to pay off her loan. Vasquez executed a release and agreed to dismiss the case and return the vehicle.

The settlement agreement also addressed the issue of attorney fees, stating: "Plaintiff's attorney will be filing a Fee Application for determination of and award of attorney's fees and costs under the California law. [¶] Hyundai Motor America agrees that the Court's award of attorneys' fees, if any, is binding and controlling on the parties, provided however, that if the Court's award of attorney's fees is between the amounts of zero and $2,999.00, Hyundai Motor America agrees to pay plaintiff the minimum of $3,000.00, in place of and instead of the amount awarded by the Court. This provision is intended to be a minimum floor for payment of attorneys' fees."

Vasquez filed a motion for attorney fees, seeking $51,012 in fees and taxable costs, including a multiplier enhancement of 1.5. Vasquez argued she was a prevailing party under the CLRA and Magnuson-Moss, and that the enhancement was appropriate due to the risks of taking on a contingent fee case. Hyundai opposed, arguing that Vasquez received nearly the same relief that she had been offered prior to the litigation — a lemon law refund, and that the litigation had not brought her any additional relief. The court denied Vasquez's motion for attorney fees. Vasquez now appeals.

II

DISCUSSION

Standard of Review

Perhaps unsurprisingly, the disagreements between the parties begin with the standard of review. Hyundai argues the proper standard is abuse of discretion; Vasquez argues it is de novo.

"Generally, the trial court's determination of the prevailing party for purposes of awarding attorney fees is an exercise of discretion, which should not be disturbed on appeal absent a clear showing of abuse of discretion. [Citations.] But the determination of the legal basis for an attorney fee award is subject to independent review. [Citation.]" (*Kim v. Euromotors West/The Auto Gallery* (2007) 149 Cal.App.4th 170, 176.)

From the record before us, it is difficult to determine whether the trial court decided that Vasquez had not met the legal basis for a fee award, or that in the trial court's judgment, a fee award of zero was reasonable in this case. Indeed, Vasquez concedes that a "nominal fee award here would have triggered abuse of discretion review." Given the peculiar procedural posture of the fee award, with the "minimum floor" provision in the settlement agreement, it is difficult to know the court's intent on this point,[2] but we can only review the record before us. We interpret the order as meaning that an award of zero indicates that Vasquez was not entitled, as a matter of law, to any award of attorney fees, and therefore we review the order de novo.

Statutory Attorney Fees

Both the CLRA and Song-Beverly include mandatory attorney fee provisions for prevailing plaintiffs. (Civ. Code, §§ 1780, subd. (e) [former subd. (d)], 1794, subd. (d).) With respect to Song-Beverly, Hyundai argues that Vasquez is not entitled to attorney fees because Hyundai promptly offered a refund. Hyundai cites *Dominguez v. American Suzuki Motor Corp.* (2008) 160 Cal.App.4th 53 (*Dominguez*) a somewhat similar case decided by this court.

In *Dominguez,* the only issue was the repurchase of the vehicle in question. "Here,

the record on appeal demonstrates the following: In November 2004, Dominguez purchased the Motorcycle. Over the course of the next six months, he submitted it for repair on at least five occasions. On June 13, 2005, Dominguez's counsel requested Suzuki repurchase or replace the Motorcycle. One week later, Suzuki informed counsel, among other things, it was unable to duplicate the problem, and requested he submit the Motorcycle to an authorized dealer for repair. Five weeks later, Suzuki offered to repurchase the Motorcycle for the total purchase price. Four weeks later, Suzuki sent counsel a letter detailing its previous offers, acknowledging counsel's request for $2,500 in attorney fees, and offering $750 in attorney fees, an amount based on what it estimated was a one-hour consultation and the drafting of one form letter, the June 13, 2005, letters to Suzuki and Pacific. After failing to agree on attorney fees and costs, Dominguez filed suit approximately six weeks after Suzuki offered to repurchase the Motorcycle." (*Dominguez, supra,* 160 Cal.App.4th at pp. 58-59.) "Approximately six weeks after Dominguez's counsel demanded Suzuki repurchase or replace the Motorcycle, Suzuki offered to repurchase the Motorcycle. But that was not good enough—counsel construed Suzuki's previous June 21, 2005, letter as a `willful' refusal to comply with Song-Beverly, which by its plain language it was not, and demanded a civil penalty two times the actual damages as permitted by section 1794, subdivision (c). Dominguez did not file suit to require Suzuki to comply with Song-Beverly. It filed suit to recover the civil penalty and/or attorney fees." (*Id.* at p. 59, fn. omitted.)

Thus, Hyundai argues, pursuant to *Dominguez,* that because it offered to repurchase the vehicle, litigation was not necessary and Vasquez is not entitled to attorney fees. If the only

issue was the repurchase, we would agree, but as Vasquez points out, she had additional claims here. Hyundai did not offer, prior to litigation, to reimburse her for the repair costs she had incurred, and the release demanded would have required that she forego her claims against the dealership. Thus, this case is not directly analogous to *Dominguez,* and as a prevailing plaintiff, she was entitled to attorney fees.

We also disagree with Hyundai's argument that Vasquez cannot be considered a prevailing plaintiff under the CLRA because Hyundai responded and agreed to buy back the vehicle within 30 days. Thus, Hyundai argues, Vasquez was prohibited from bringing an action under the CLRA at all, because "appropriate correction" was taken. (Civ. Code, § 1782, subd. (b).) While Hyundai might have felt that repurchasing the vehicle, on its own terms, was sufficient, Vasquez also felt she was entitled to her incidental damages, such as her out-of-pocket repair costs. We cannot say, under these facts, that such a demand was unreasonable. Whether or not the litigation ultimately achieved her goal, she was not precluded from bringing a CLRA claim. To say otherwise would mean that any manufacturer who offered a consumer a part of the compensation requested, no matter how reasonable, is immune from a CLRA claim for damages. We decline to interpret the statute in such a fashion, and find no case law supporting such a reading. Thus, while her recovery was not great compared to Hyundai's settlement offers, Vasquez was a prevailing plaintiff under the CLRA.

Throughout, Hyundai argues that litigation did not accomplish much, and that Vasquez's recovery was trivial in comparison to her demands. That is true, but such facts go to the reasonable amount of fees, not her statutory entitlement to them.

Reasonable Attorney Fees

Under either the CLRA or Song-Beverly, attorney fees must be "reasonable" (Civ. Code, § 1780, subd. (e) [former subd. (d)]) or "reasonably incurred" (Civ. Code, § 1794, subd. (d).). The amount of an attorney fee is a matter for the trial court's discretion. (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.) Therefore, on remand, the trial court is required to exercise its discretion to set a reasonable fee, and for purposes of the trial court's decision, it should ignore the $3,000 "minimum floor" set by the settlement agreement and reach its decision without regard to that provision.

III

DISPOSITION

The order is reversed and the matter is remanded for further proceedings. In the interests of justice, each party shall bear its own costs on appeal.

WE CONCUR:

O'LEARY, ACTING P. J.

ARONSON, J.